

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR NOVEMBER 19, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, NOVEMBER 19, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, NOVEMBER 18, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT EMERGENCY LOCAL RULE 10.28.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

1. M-CV-0063880 DISCOVER BANK v. VOLARVICH, BRYCE

Plaintiff's Motion to Set Aside Default Judgment and Dismiss Action

The motion is granted under Code of Civil Procedure section 473(d). The judgment entered on November 19, 2015 is vacated and the case is dismissed with prejudice.

2. M-CV-0076144 CONAM THE BRIDGES v. HADLEY, JOSEPH

The request for an evidentiary hearing is dropped from the calendar as no moving papers were filed with the court.

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3. M-CV-0076678 SURETEC INS CO v. GRAVES, ZENAIDA

Plaintiff Suretec Insurance Company's Motion to Compel Responses to Requests for Admissions

The motion is granted. Defendant Zenaida Graves shall provide further verified responses, without further objections, to requests for admissions, set one, by December 11, 2020.

Plaintiff Suretec Insurance Company's Motion to Compel Deposition and Sanctions

The motion is granted. Defendant Zenaida Graves shall appear for her deposition on a date, time, and at a location as noticed by plaintiff. Sanctions in the amount of \$2,661.50 are imposed upon defendant Zenaida Graves. (Code of Civil Procedure section 2025.450(g)(1).)

4. M-CV-0076698 SCHNEIDER, ARDITH v. CAMPBELL, JERRY
S-CV-0042706 CAMPBELL, JERRY v. SCHNEIDER, ARDITH

Jerry Campbell's Motion for Consolidation

The motion is granted. In the current request, Jerry Campbell requests the court consolidate the unlimited civil quiet title action with a pending unlawful detainer action. A court may consolidate actions that involve common questions of law or fact. (Code of Civil Procedure section 1048.) Jerry Campbell filed his unlimited civil action on April 26, 2019 seeking, among other things, to quiet title to the property located at 23100 Placer Hills Road in Colfax, California. Ardith Schneider filed her answer to this complaint on June 18, 2020. Ms. Schneider also filed an unlawful detainer action on June 18, 2020 seeking to evict Mr. Campbell from the same property. The two actions involve the same property with both parties asserting ownership and possession of the property. The two cases are proper subjects for consolidation.

Placer Court Case Jerry Campbell v. Ardith Schneider, case no. SCV-42706, and Placer Court Case Ardith Schneider v. Jerry Campbell, case no. MCV-76698, are consolidated for all purposes including trial. Case no. SCV-42706 shall be the lead case with all future filings using this case number.

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The court confirms the case management conference hearing currently set for December 8, 2020.

5. S-CV-0032997 ADAME, BRENDA v. GONZALEZ, EFRAIN
 S-CV-0032242 GORMLEY, JACQUELINE v. GONZALEZ, EFRAIN
 S-CV-0032348 WILLIAMS, NATALIE v. GONZALEZ, EFRAIN
 S-CV-0032349 FRANCIS, AARON v. GONZALEZ, EFRAIN
 S-CV-0032518 DEARDORFF-BOATRIGHT, CHARLENE v. GONZALEZ
 S-CV-0032519 MOSQUEDA, OPHELIA v. GONZALEZ, EFRAIN
 S-CV-0032550 ROSE, AMY v. GONZALEZ, EFRAIN
 S-CV-0032762 BRELSFORD, VIRGINIA v. GONZALEZ, EFRAIN
 S-CV-0032910 BASILEU, JANET v. GONZALEZ, EFRAIN
 S-CV-0032990 RODRIGUEZ, SARAI v. GONZALEZ, EFRAIN
 S-CV-0032991 SOMERS, LUCY v. GONZALEZ, EFRAIN
 S-CV-0032992 MUNOZ, DULCE v. GONZALEZ, EFRAIN
 S-CV-0032993 BROADWAY, REBECCA v. GONZALEZ, EFRAIN
 S-CV-0032995 ARAKELIAN, GOHAR v. GONZALEZ, EFRAIN
 S-CV-0032996 ADAME, ULISES v. GONZALEZ, EFRAIN
 S-CV-0032998 FRANCO, SNA v. GONZALEZ, EFRAIN
 S-CV-0032999 LAVOW-DAVIS, PATRICIA v. GONZALEZ, EFRAIN
 S-CV-0033003 CARBAJAL, PAOLA v. GONZALEZ, EFRAIN
 S-CV-0033022 REYES, MARIA v. GONZALEZ, EFRAIN
 S-CV-0033235 BROWN, STEVIE v. GONZALEZ, EFRAIN

Plaintiffs' Motion to Enforce Settlement under Code of Civil Procedure section 664.6

Preliminary Matters

Initially, the court consolidates the 20 matters for the limited purpose of hearing the current motions. Placer Court Case Nos. (1) SCV-32993 [Brenda Adame v. Efrain Gonzalez]; (2) SCV-32242 [Jaqueline Gormley v. Efrain Gonzalez]; (3) SCV-32348 [Natalie William v. Efrain Gonzalez]; (4) SCV-32349 [Aaron Francis v. Efrain Gonzalez]; (5) SCV-32518 [Charlene Deardorff-Boatright v. Efrain Gonzalez]; (6) SCV-32519 [Ophelia Mosqueda v. Efrain Gonzalez]; (7) SCV-32550 [Amy Rose v. Efrain Gonzalez]; (8) SCV-32762 [Virginia Brelsford v. Efrain Gonzalez]; (9) SCV-32910 [Janet Basileu v. Efrain Gonzalez]; (10) SCV-32990 [Sarai Rodriguez v. Efrain Gonzalez]; (11) SCV-32991 [Lucy Somers v. Efrain Gonzalez]; (12) SCV-32992 [Dulce Munoz v. Efrain Gonzalez]; (13) SCV-32993 [Rebecca Broadway v. Efrain Gonzalez]; (14) SCV-32995 [Gohar Arakelyan v. Efrain Gonzalez]; (15) SCV-32996 [Ulises Adame v. Efrain Gonzalez]; (16) SCV-32998 [Sna Franco v. Efrain

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Gonzalez]; (17) SCV-32999 [Patricia Lavow-Davis v. Efrain Gonzalez]; (18) SCV-33003 [Paola Carbajal v. Efrain Gonzalez]; (19) SCV-33022 [Maria Reyes v. Efrain Gonzalez]; and (20) SCV-33235 [Stevie Brown v. Efrain Gonzalez] are consolidated for the limited purposes of hearing the 20 pending motions.

The clerk shall prepare separate minutes for each case that includes the ruling of the court.

The court also clarifies the motions are not brought as to the following plaintiffs:

NO. OF CASES	CASE NO.	PLAINTIFF
1.	SCV-0032242	Gormley, John ONLY
2.	SCV-0032518	Boatright, Sean ONLY
3.	SCV-0032762	Brelsford, Oliver ONLY
4.	SCV-0032910	Basileu, Gary ONLY
5.	SCV-0032990	Foronda, Cristain ONLY
6.	SCV-0032991	Attebury, Delaney ONLY
7.	SCV-0032998	Franco, Luis ONLY
8.	SCV-0032999	Davis, Edward ONLY
9.	SCV-0033022	Reyes, Arturo ONLY
10.	SCV-0033235	Brown, Rusty ONLY

Ruling on Motion

In the current request, plaintiffs seek to enforce the settlement agreement entered into by the parties under Code of Civil Procedure section 664.6. Specifically, the moving plaintiffs seek entry of a judgment in the amount of \$1,393,084.00. This amount includes the \$575,000 settlement in addition to \$818,084.00 in liquidated damages. Defendants oppose the inclusion of liquidated damages, arguing the provision is unreasonable and unconscionable. Defendants, however, have failed to make a sufficient showing to invalidate the liquidated damages provision.

A liquidated damages clause is generally presumed to be valid. (Civil Code section 1671.) It is up to the party challenging the validity of the clause to show liquidated damages were either unreasonable at the time the contract was made. (Civil Code section 1671(b); *Vitatech Internat., Inc. v. Sporn* (2017) 16 Cal.App.5th 796, 805-806.) This is done through a showing that the parties' estimated damages are outside the range of reasonableness in light of the circumstances known at the time of the estimate. (*Krechuniak v. Noorzoy* (2017) 11 Cal.App.5th 713, 722.) A liquidated damages clause may also be

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invalidated where the evidence presented establishes the provision was intended to impose a penalty. (*Ibid.*) The characterization of such a provision as a penalty, however, does not render the liquidated damages invalid. (*Ibid.*) The court looks to the substance of the entire agreement to determine the validity of the clause rather than relying on the parties' framing of the clause as a penalty. (*Ibid.*)

Plaintiffs took a significant risk entering into the global settlement with defendants. The parties agreed plaintiffs' combined recovery at trial to be approximately \$1.5 million. (Jenni declaration ¶10.) Defendants only had insurance to cover 6 of 20 matters. (Id. at ¶6.) Plaintiffs understood there was a possibility they would not receive anything from defendants but defendants assured plaintiffs defendants could pay \$250,000 of a \$575,000 settlement immediately. (Id. at ¶¶7-10.) The liquidated damages provision was negotiated between the parties as an incentive for defendants to pay the additional \$325,000 of the negotiated settlement quickly. (Id. at ¶9.) The global settlement was negotiated with the assistance of counsel and after numerous drafts were exchanged between the parties. (Id. at ¶5.)

This evidence shows the parties participated in significant negotiations to reach a fair amount of compensation for plaintiffs if defendants failed to pay the settlement amount. Plaintiffs accepted a significantly reduced settlement amount with the understanding that \$275,000 would be immediately available to them. The liquidated damages of \$1,644 per day, or \$50,000 per month, was intended to encourage defendants to quickly pay the \$575,000 settlement. The liquidated damages are capped at \$1.5 million, which is the total amount of damages the parties agreed plaintiffs would have recovered if the matter proceeded to trial. Thus, the evidence presented to the court shows the liquidated damages clause reasonably compensates plaintiffs for the losses they sustained. Defendants do not submit sufficient evidence to show the clause is unreasonable, a penalty, or unconscionable.

For the forgoing reasons, the motion is granted. Judgment in the amount of \$1,393,084.00, which includes the settlement amount of \$575,000.00 along with \$818,084.00 in liquidated damages.

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6. S-CV-0036980 SPENCER, SAMUEL v. SINCLAIR, ROBERT

The motion for attorney's fees is continued to December 17, 2020 at 8:30 a.m. in the law and motion department to be heard by Commissioner Michael A. Jacques. The court apologizes to the parties for the inconvenience.

7. S-CV-0038834 SMITH, TIMOTHY v. MOTTINI, PHILLIP

The motion to compel bank records is continued to Thursday, December 3, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

8. S-CV-0040270 FIELD SUPPLY v. FIELD, JONATHAN

Plaintiffs' Motion to Quash Subpoena and/or Protective Order

Ruling on Requests for Judicial Notice

Plaintiffs' request for judicial notice is granted under Evidence Code section 452.

Defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is granted in part. Plaintiffs' request to quash the subpoena is denied as they have not made a sufficient showing to warrant quashing the subpoenas. Plaintiffs' alternative relief for the issuance of a protective order is granted. The production of subpoenaed documents is subject to a protective order prohibiting disclosure of any personal bank record information that may exist in the corporate bank records for the individual plaintiffs Seven Mehalakis, John Mehalakis, and Virginia Mehalakis. The parties are also prohibited from disseminating any of the bank records for purposes other than use in this litigation. The requests for sanctions is denied as plaintiffs did not completely prevail in this matter.

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9. S-CV-0041704 GREENE, RICHARD v. BOZORGZAD, HOSSEIN

Plaintiff Richard Greene's Motion to Tax Costs

Preliminary Matters

Initially, the court grants plaintiff's request for relief from the untimely filing of his motion under Code of Civil Procedure section 473(b). Plaintiff's counsel has made a sufficient showing of excusable neglect to warrant relief.

Ruling on Motion

The motion is granted in part. The right to costs is based in statute. A prevailing party is entitled to recover its costs, which include court filing fees. (Code of Civil Procedure sections 1032, 1033.5.) Defendant HBF Holdings seeks to recover initial filing fees not only for itself but for four other defendants. The cost memo, however, is only brought on behalf of HBF Holdings and not all of defendants. The other defendants, rather than HBF Holdings, incurred the filing and motion fees in relation to their appearances in this action. They do not seek recovery of these fees and HBF Holdings is not entitled to recover them unilaterally.

The memorandum of costs is taxed in the amount of \$1,800.00.

10. S-CV-0042598 DRYSDALE, ANDREW v. CLAYTON, KEITH

The motion to compel further discovery responses is continued to Thursday, December 3, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

11. S-CV-0042659 FAULKNER, MERCEDES v. BRAZIL, ANASTASIA

Defendant City of Rocklin's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Preliminary Matters

Judge Charles Wachob discloses the following: (1) I was the trial judge in the criminal case of People v. Anastasia Brazil; and (2) I am a nephew of Bruce Walkup, the founder of the Walkup law offices, one of the offices representing

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plaintiff Stephen Googooian in this action. Bruce Walkup died in 1994. Since then, I have never had any personal, social or other relationship with any attorney or person associated with the Walkup office. I have heard other matters in which attorneys from that office have appeared. I have no doubt I can remain fair and impartial with respect to this case.

Ruling on Requests for Judicial Notice

Defendant requests the court take judicial notice of accident reconstructionist Chris Kauderer's prior trial testimony in *People v. Brazil*, Placer Court Case No. 62-164093. While the court may take judicial notice that Mr. Kauderer made the statements in the transcript, the courts does not take judicial notice of the truth of those statements. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) On a related note, moving defendant relies on the criminal trial testimony of Mr. Kauderer's in support of several of its statement of facts. The court takes note of Evidence Code section 1292, which can provide an exception to the hearsay rule for former testimony. Here, however, there is no showing that Mr. Kauderer was unavailable as a witness, one of the requirements which must be met in order for this hearsay exception to apply. The request for judicial notice is granted subject to the above limitations.

Ruling on Objections

Plaintiff's objections nos. 1, 2, 3, 4, and 7 are sustained. Plaintiff's objections nos. 5 and 6 are overruled.

Plaintiff's objections to Exhibits SS, PP, QQ, and RR are sustained.

Defendant's objections, as to plaintiff's evidence, nos. 1, 35, and 36 are sustained. Defendant's objections nos. 2-34, and 37 are overruled.

Defendant's objections, as to defendant Anastasia Brazil's evidence, nos. 1 and 2 are sustained.

Ruling on Motion

The trial court shall grant a motion for summary judgment if "all of the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code of Civil

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Procedure section 437c(c).) A party to the action may also move for summary adjudication if the party contends there is no merit to one or more of the causes of action. (Code of Civil Procedure section 437c(f)(1).) The moving party bears the initial burden of establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (Id. at 437c(p)(2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (Ibid.) In reviewing a motion for summary judgment or summary adjudication, the trial court must view the supporting evidence, and inferences drawn from the evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The court may not grant a motion for summary judgment and/or adjudication based upon inferences if they are contradicted by other inferences or evidence that raise a triable issue of material fact. (*Aguilar v. Atlantic Richfield Company, supra*, at p. 856.) The existence of equally conflicting evidence requires a trial to resolve the disputes. (*Kid's Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 881.) Even where the evidence suggests a strong possibility, or even a strong likelihood, that a trier of fact would resolve the issues in favor of the moving party, where the issues and evidence are close, it does not conclusively establish there is no existence of a triable issue of material fact. (see *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 837-838.)

In the current request, the City seeks summary judgment or adjudication of the fifth cause of action for dangerous conditions of public property, asserting any alleged dangerous condition was not a substantial factor in proximately causing plaintiff's injuries. A public entity may be held liable for injuries caused by a dangerous condition of public property if the plaintiff shows the property was in a dangerous condition at the time of the injury; the injury was proximately caused by the dangerous condition; and the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred. (Government Code section 835; *Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1105.) A public entity must establish, as a matter of law, that plaintiff would be unable to present evidence that any condition of the public property where the collision was also a substantial causative factor in bringing about plaintiff's injuries. (*Cole v. town of Los Gatos* (2012) 205 Cal.App.4th 749, 769.) The conduct of a third party will not bar liability unless it operates as a superseding or supervening cause so as to break the chain of legal causation between the defendant's conduct and the plaintiff's injuries. (*Ibid.*) Further, the risk posed by intoxicated drivers to persons near a roadway may be foreseeable in itself so as to present a question of fact to a jury. (*Ibid.*)

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Here, there exists a triable issue as to whether the alleged dangerous condition was a substantial factor in causing plaintiff's injuries. Plaintiff submits evidence showing that the intersection had a significantly high rate of collisions where drivers did not see or notice stop signs. (Plaintiff's Responsive SSUMF Nos. 3-8.) Plaintiff also submits evidence of citizen complaints regarding the intersection that included vehicles not stopping at the stop signs. (Id. at Nos. 1, 9-12, 14-17.) Nearly twenty percent of the citations issued near the intersection within the last eleven years involved stop sign violations. (Id. at No. 13.) This is compared to the City's evidence that defendant Anastasia Brazil was intoxicated and failed to stop at several stop signs when she collided with plaintiff's vehicle. (City's SSUMF Nos. 3-5, 34.) This evidence creates a factual dispute that cannot be determined through summary judgment or adjudication. For these reasons, the motion is denied in its entirety.

12. S-CV-0042974 TINDALL, GREGORY v. SMITH, AGHEE

Plaintiff's Motion for Leave to Amend the First Amended Complaint

The motion is granted under Code of Civil Procedure section 473(a). Plaintiff shall file and serve his second amended complaint by December 4, 2020.

13. S-CV-0042984 SELTER, BRUCE v. JAMES, KELLY

Defendants' County of Placer and Placer County In-Home Supportive Services Public Authority's Motion for Summary Judgment or in the Alternative Summary Adjudication of Issues

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is granted. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure section 437c(c).) The moving party bears the initial burden of establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (Id. at

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437c(p)(2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (Ibid.) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The court reviews the motion keeping this in mind.

Defendants have met their initial burden here. Placer County has made a sufficient showing that statutory immunity bars the negligence claim alleged against it. Plaintiff Bruce Selter was involved in a vehicle collision with defendant Kelly James on September 18, 2018. (Defendants' SSUMF No. 1.) Ms. James was acting as an in-home support services provider for defendant Mary Butler at the time of the collision. (Id. at Nos. 1-4.) Welfare & Institutions Code section 12301.6(f)(3) states that "[c]ounties and the state shall be immune from any liability resulting from their implementation ... in the administration of the In-Home Supportive Services program Any obligation of the public authority or the consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state." Section 12301.6(f)(3) provides Placer County statutory immunity from the negligence claim.

Placer County IHSS has also made a sufficient showing that it is not an employer for the purposes of plaintiff's negligence claim. To reiterate, the collision between plaintiff and Ms. James took place while Ms. James was acting as an in-home support services provider for Ms. Butler. (Defendants' SSUMF Nos. 1-4.) Welfare & Institutions section 12301.6(f)(1) states "[a]ny nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed *not to be the employer of in-home supportive services personnel* or waiver personal care services personnel referred to recipients under this section for purposes of liability *due to the negligence or intentional torts of the in-home supportive services personnel* or waiver personal care services personnel." [Emphasis added.] Placer County IHSS has met its initial burden by showing it owed no duty to plaintiff since Placer County IHSS is not an employer for the purposes of plaintiff's negligence claim. This shifts the burden to plaintiff to establish a triable issue of material fact as to both defendants.

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Plaintiff, however, has not filed any opposition to the current motion. Since plaintiff has not established a triable issue of material fact, the motion is granted in its entirety.

14. S-CV-0044082 SOK, SINNA v. GHASSAN AUTOMOTIVE

Plaintiff Sinna Sok's Motion for Terminating Sanctions or, Alternatively, to Deem Request for Admissions as Admitted

The motion is granted in part. In the current request, plaintiff seeks either terminating sanctions or to deem its request for admissions as admitted. Terminating sanctions are an extreme sanction for those cases where misuses of the discovery process are so pervasive that a less drastic sanction will not sufficiently address the discovery derelictions. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796-797.) In light of the extreme effect of terminating sanctions, courts do not impose such a sanction lightly. The dismissal of an action is a drastic sanction that is only applied after a party has had an opportunity to comply with a court order yet still fails to do so. (see *Ruvalcaba v. Government Employees Ins. Co.* (1990) 222 Cal.App.3d 1579, 1581.) The totality of the circumstances surrounding the discovery violations are considered when ordering terminating sanctions: (1) whether the party's conduct was willful; (2) the detriment to the propounding party; and (3) the number of formal and informal attempts to obtain discovery. (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.Ap.4th 377, 390.) Plaintiff's request for terminating sanctions is based upon defendant's failure to timely respond to the court's order entered on July 30, 2020. Plaintiff concedes, however, that defendant ultimately provided untimely responses to the ordered discovery. Plaintiff has not made a sufficient showing that terminating sanctions are warranted at this junction and this request is denied.

This leaves plaintiff's request to deem its request for admissions, set one, as admitted. The request is granted. The matters encompassed in plaintiff's requests for admissions, set one, are deemed admitted. Sanctions in the amount of \$1,110 are imposed on defendant Ghassan Automotive, LLC pursuant to Code of Civil Procedure section 2033.280(c).

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15. **S-CV-0044128 PARKER, TONYA v. NATIONSTAR MORTGAGE**

Defendants' Motion for Judgment on the Pleadings

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

In the current request, defendants seek judgment on the pleadings as to all six causes of action alleged in the complaint. A motion for judgment on the pleading may be granted where the complaint does not state sufficient facts to constitute a cause of action. (Code of Civil Procedure section 438(c)(1)(B)(ii).) The motion has the same function as a demurrer but is brought where the time for a demurrer has expired. (Code of Civil Procedure section 438(g); *Southern California Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.)

First Cause of Action – Violations of Civil Code section
2923.6(c)

In this claim, plaintiffs allege defendants violated Section 2923.6(c) by failing to rescind all foreclosure actions after receiving their loan modification application. (Complaint ¶28.) The allegations within the complaint, however, are insufficiently pleaded. Plaintiffs allege defendants recorded the notice of trustee's sale on June 20, 2019. (Id. at ¶26.) They also allege their application was submitted after the recording of the notice on November 15, 2019. (Id. at ¶25.) Plaintiffs go on to allege, in conclusory fashion, defendants failed to rescind all foreclosure proceedings while also alleging that the trustee's sale was continued to January 8, 2020. (Id. at ¶21.) These allegations are insufficient to support a violation of Section 2923.6(c).

Second Cause of Action – Violations of Civil Code section
2923.7

This cause of action also fails to sufficiently allege a violation of Section 2923.7. Plaintiffs allege they submitted their loan application on November 15, 2019 but go on to conclude defendants failed to assign a single point of contact. (Complaint

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¶32.) The conclusory language is deficient and fails to allege a sufficient claim under Section 2923.7.

Third Cause of Action – Violations of Civil Code section 2924.9

Plaintiffs also fail to sufficiently allege a claim under Section 2924.9. Again, plaintiffs allege in a conclusory fashion that defendants failed to notify plaintiffs of preventative foreclosure measures without actually alleging facts to support this conclusion.

Fourth Cause of Action – Violations of Civil Code section 2924.10

Again, plaintiff's allegations are conclusory in nature and fail to allege sufficient facts of defendants' failure to provide notice of receipt of their application.

Fifth Cause of Action – Negligence

As seen in the other causes of action, plaintiffs' negligence claim is long on conclusion and legal assertions but short on factual allegations to support each of the elements for negligence.

Sixth Cause of Action – UCL Violations

Finally, the UCL claim fails to allege sufficient facts to show unlawful, unfair, or fraudulent conduct. The allegations are, again, conclusory in nature. They also rely on the violations in other causes of action, which are deficiently pleaded.

Disposition

In sum, plaintiffs' entire complaint is fraught with conclusory allegations that fail to allege the facts necessary to support any of the six causes of action. The motion is granted in its entirety.

The remaining issue to address is whether plaintiffs should be afforded leave to amend the complaint. Plaintiffs request leave to amend but do not provide any discussion on how they intend to remedy the significant defects that permeate through the entire complaint. Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the identified defects. (*Assoc. of Comm.*

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Org. for Reform Now v. Dept. of Indus. Relations (1995) 41 Cal.App.4th 298, 302.) They must clearly and specifically set forth how the complaint can be amended to address the pleading deficiencies. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43-44.) Plaintiffs fail to make such a showing here. For these reasons, the motion is granted without leave to amend.

16. S-CV-0044186 BASTEK, SCOTT v. BRIMER, JAMIE

Defendant Jamie Brimer's Motion for Leave to File Cross-Complaint

Ruling on Objections

Defendant's objections to the Susan Kirkgaard declaration are sustained as to paragraphs 3 through 11. The objections are overruled as to the remainder of declaration.

Ruling on Motion

The motion is denied. A defendant may seek leave to file an untimely permissive cross-complaint in the interest of justice at any time during the course of the action or before the setting of trial. (Code of Civil Procedure sections 428.50(c), 428.10(b).) Permission to file a permissive cross-complaint is solely within the trial court's discretion. (*Orient Handel v. United States Fid. and Guar. Co.* (1987) 192 Cal.App.3d 684, 701.) In exercising its discretion, the court may consider the moving party's delay in seeking leave to file a cross-complaint, including whether the facts giving rise to the proposed cross-complaint were known to the party. (*Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864.) Here, defendant has not made a sufficient showing to warrant leave. Defendant has not provided a sufficient explanation for the delay in seeking leave to file the subject cross complaint. Nor has defendant made a sufficient showing as to what recent facts were discovered that warrant leave. For the foregoing reasons, the motion is denied.

17. S-CV-0044404 KENDALL, LAUREN v. KILGORE, MICHELLE

Petition to Approve Compromise of Minor's Pending Claim

The petition to approve compromise of minor's pending claim is granted as prayed. After careful consideration of the petition and supporting attachments,

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the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

18. S-CV-0044482 LINTON, MARK v. SPORTS DESTINY INVEST

Plaintiffs' Motion for Leave to File Second Amended Complaint

The motion is granted under Code of Civil Procedure sections 473 and 576. Plaintiffs shall file and serve their second amended complaint by December 4, 2020.

19. S-CV-0044678 TISKIY, SVETLANA v. CLEARN RECON CORP

The demurrer is dropped from the calendar. Plaintiff filed a first amended complaint.

20. S-CV-0044968 WHITMARSH, ROBERT v. THOMPSON, GREGORY

Plaintiffs' Motion for Leave to File a First Amended Complaint

The motion is granted under Code of Civil Procedure section 473(a). Plaintiffs shall file and serve their first amended complaint by December 4, 2020.

21. S-CV-0044985 LOR, CHA v. DUENAS, AMI

The motion to strike punitive damages is continued to Thursday, December 3, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

22. S-CV-0045182 DRM INSURANCE SERVICES v. NEW LEGEND

Defendant New Legend, Inc.'s Demurrer to the Complaint

The demurrer is sustained in part with leave amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural*

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Materials Co. (1981) 123 Cal.App.3d 593, 604.) In the current request, defendant challenges the sufficiency of all three causes of action alleged in the complaint.

Turning to the first cause of action for breach of contract, defendant challenges a portion of the allegations asserting plaintiff has not sufficiently alleged breach of contract as to the \$22,500 commission sought in the breach of contract claim. A demurrer is not the proper vehicle for challenging these allegations, which are better addressed through a motion to strike. A review of the first cause of action shows that it sufficiently alleges a claim for breach of contract. The demurrer is overruled as to the first cause of action.

Plaintiff alleges a fraud claim in the second cause of action. Fraud must be specifically pled, with facts stating how, when, where, to whom and by what means any misrepresentations were made to a plaintiff. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) In addition, fraud allegations against a corporate defendant require the names of individuals who made misrepresentations, their authority to speak on behalf of the corporation, whom the individuals spoke to, what was said or written, and when it was said or written. (*Ibid.*) The fraud allegations are conclusory in nature, failing to allege the level of specificity necessary to assert such a claim against a corporate defendant. The demurrer is sustained with leave to amend.

The final cause of action alleges intentional interference with performance of a contract. The elements of such a claim include (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) damages. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.) Plaintiff appears to allege defendant's failure to make timely payments on an insurance policy with Allied World Surplus Lines Insurance Company (Allied World) resulted in plaintiff losing a \$22,500 commission. (Complaint ¶¶46-52.) These allegations do not sufficiently allege defendants intentionally breached or disrupted an agreement between plaintiff and Allied World. The allegations also fail to sufficiently allege defendant knew of the commission relationship between plaintiff and Allied World. The demurrer is also sustained with leave to amend as to the third cause of action.

Plaintiff may file and serve its first amended complaint by December 4, 2020.

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Defendant New Legend, Inc.'s Motion to Strike the Complaint

The motion is granted with leave to amend. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading or to strike a pleading not drawn in conformity with the law. (Code of Civil Procedure section 436(a), (b).) In the current motion, defendant seeks to strike the prayer seeking punitive damages. In order to claim punitive damages, a plaintiff must allege facts that a defendant is guilty of oppression, fraud, or malice. (Civil Code section 3294.) As previously discussed in relation to the demurrer, the complaint fails to allege sufficient facts to maintain a viable fraud claim. The remainder of the allegations do not support punitive damages. Thus, the prayer for punitive damages is not supported by the allegations and should be stricken.

Plaintiff may file and serve its first amended complaint by December 4, 2020.

23. S-CV-0045504 IN RE PETITION OF ANDREWS, STEVEN

The petition to approve compromise of minor's pending claim is granted as prayed. After careful consideration of the petition and supporting attachments, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.